IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.1259 of 2005

Date of decision 26.7.2007

H.P.S.E.B. and another Petitioners

Vs.

Kuldip Kumar and anr. Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma,J.

Whether approved for reporting?[1] No.

For the Petitioners: Mr. Shrawan Dogra, Advocate.

For the Respondent : Mr. Anil Kumar, Advocate, vice Mr.Sandeep Kaushik,Advocate, for respondent No.1.

Rajiv Sharma, J.

A challenge has been laid by way of this petition to the award passed by the Labour Court-cum- Industrial Tribunal, Dharamshala dated 6.8.2005 in Reference No.222/2003. The State Government had made the following reference to the Labour Court-cum-Industrial Tribunal:

> "Whether the termination of services of Sh.Kuldip Kumar son of Sh.Narayan Dass, by the Executive Engineer, H.P.S.E.B., Electrical Division, Bilaspur, District Bilaspur w.e.f. August, 1998 without complying the provisions of the Industrial Disputes Act, 1947 and clause 14.2 of the certified Standing Order of the Board, whereas juniors to him are retained by the Board?

In sequel to the reference made by the State Government the respondent hereafter referred to as the workman for convenience sake, had filed his statement of claim. He had primarily contended before the Labour Court that he had worked as Electrical Beldar in two spells with the employer i.e. with effect from 27.5.1979 to 16.12.1988 and 26.12.1992 to

---

[1] Whether reporter of local papers are allowed to see the judgment ? No.

25.2.1998 and his retrenchment has been effected in violation of mandatory provisions of Certified Standing Orders framed by the employer. He had also contended before the Labour Court that persons junior to him were retained at the time of his retrenchment. The employer had filed reply to the statement of claim filed by the workman. The Labour Court on the basis of the pleadings of the parties had answered the reference in affirmative on 6.8.2005.

Shri Shrawan Dogra, learned counsel appearing for the petitioners had strenuously argued that the Certified Standing Orders framed by the Board for governing the condition of service of its employees had ceased to apply after 1992. Mr. Anil Kumar, learned counsel appearing for respondent No.1 had supported the Award dated 6.8.2005.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

Admittedly the workman had not completed 240 days preceding 12 calendar months at the time of his retrenchment. The certified standing orders framed by the Board have ceased to apply after 1992.Thus the Labour Court could not apply the Certified Standing Orders framed under the Industrial Employment (Standing Orders)Act, 1946 qua the petitioner. The finding recorded by the Labour Court-cum-Industrial Tribunal that there was violation of sub clause (1) of clause 14 of the Certified Standing Orders framed by the Board is bad in law. As far as the finding recorded by the Labour Court that there was violation of Section 25 (G) of the Industrial Disputes Act, 1947 is concerned, the same is liable to be upheld. The workman had given the names of Gurdev, Ram Parkash, Bhag Singh and Ram Dhan who were juniors to him but retained by the employer at the time of his retrenchment. The employer had not led any evidence to deny the averments made by the workman that persons junior to him were retained. The Labour Court had come to just conclusion that the petitioner was entitled to get protection of Section 25 (G) of the

Industrial Disputes Act,1947 since persons junior to him were retained at the time of his retrenchment. The workman was retrenched on 26.2.1998 but the reference had been made in the year 2003. In view of this the labour Court could not grant 15% back wages while directing reinstatement of the workman, though he will be entitled to get the entire period counted for the purpose of seniority alone.

The upshot of the above discussion is that the Labour Court erred in law by declaring the retrenchment of the workman invalid for non compliance of sub clause (2) of clause 14 of the Certified Standing Orders framed by the Board and finding recorded by the Labour Court that the workman was entitled to get protection of Section 25 (G) of the Industrial Disputes Act, 1947 is upheld. The Labour Court could not grant back wages to the extent of 15% to the workman since there was delay of 5 years in raising the dispute. The workman is entitled to get his services counted for the purpose of seniority. Accordingly the writ petition is partly allowed to the extent that the finding recorded by the Labour Court that the workman was entitled to protection of sub clause (2) of clause 14 of the Certified Standing Orders framed by the Board is set aside. The finding recorded by the Labour Court that the workman was entitled to protection of Section 25 (G) of the Act is upheld. Consequently, the workman is entitled to reinstatement but without back wages though his period of absence will be counted for the purpose of seniority alone.

In view of the above, the writ petition is disposed of. The respondents are directed to reinstate the workman within a period of three weeks.

July 26,2007(g) **(Rajiv Sharma),J**.